SIR HAN HOE LIM v. LIM KIM SENG & ANOR.

[O. C. J. (Whitton J.) March 16, 1956]

[Singapore — Originating Summons No. 85 of 1955]

Settlement— Trust to maintain and benefit a school in settlor's village in China and to maintain and benefit an ancestral house of worship in the same village — Whether trusts charitable — Impracticability of carrying trusts into effect — Whether trusts were or became void and unenforceable.

In this case one Lim Loh had assigned certain leasehold properties by an Indenture of Settlement dated September 26, 1929 to four trustees subject to two trusts: firstly to maintain and benefit a school in the settlor's village at Fukkien, China, and secondly to maintain and benefit an ancestral house of worship in the same village. The trusts were to continue for a period longer than that permitted by the rule against perpetuities. The plaintiff was the sole surviving trustee of the last will of the settlor and the defendants were the surviving trustees of the settlement. The plaintiff sought declarations: (a) that upon the true construction of the settlement in the events which had happened the trusts were void and unenforceable, and (b) that in consequence of the said trusts being void and unenforceable a resulting trust of the properties arose in favour of the settlor and his estate.

Held: (1) the settlement did not disclose any general charitable intention, but merely declared two specific trusts in favour of (a) the school and (b) the ancestral house of worship; (2) the trust in favour of the ancestral house of worship did not constitute a valid charitable trust and was therefore void as infringing the rule against perpetuities; (3) the trust in favour of the school would have been a valid charitable trust if it had been one which was capable of being carried into execution, but (4) the facts disclosed that because of the political conditions which had prevailed in the part of China in question ever since the date of the settlement and were still prevailing, it had never been and still was not practicable to carry the trust into execution and, therefore, the trust had failed and become void and unenforceable because of impracticability; (5) in the circumstances, the cy-pres rule was not applicable, and in the result there was a resulting trust of the properties in favour of the testator and his estate.

[**Editorial Note:** There have been a number of cases in recent years where the practicability of executing trusts in favour of objects in China has had to be considered by the Court. In the present case the learned Judge was satisfied on the evidence that a trust declared in 1929 in favour of a school in China had been impracticable ever since that date and was still impracticable. Counsel for the settlor's estate contended that, in such circumstances, the Court ought now to declare the trust void and unenforceable notwithstanding the fact that it was on the face of it a charitable one. He relied in support of this contention on the case of **Re White's Will Trusts** (1954) 2 All E.R. 620. Counsel further submitted that following upon the decision in that case, the principles stated in **Tudor** on Charities, 5th Edn. at p. 149, could no longer be considered good law. The learned Judge by his judgment has impliedly accepted these submissions. See also **Lim Chooi Chuan v. Lim Chew Chee** (1948-49) M.L.J. Supp. 66 where Bostock Hill J. found that in the circumstances of the case it was impracticable to carry out the trusts and cy-pres doctrine could not apply.]

Cases referred to:—

(1) *In re Wilson* (1913) 1 Ch. 314

(2) *Gilmour v. Coats & Ors.* (1949) A.C. 426; (1949) 1 All E.R. 848.

ORIGINATING SUMMONS.

T. E. Atkinson for the plaintiff.

C. F. J. Ess for the 1st defendant.

A. V. Winslow (Crown Counsel) for the Attorney-General.

Cur. Adv. Vult.

Whitton J.: — This matter came before me in consequence of an Order of the Chief Justice dated 12th August 1955 that Prayers 1 and 2 of the Originating Summons be adjourned into Court for argument. The case arises out of an Indenture of Settlement dated 26th September 1929 by which one Lim Loh assigned certain leasehold properties to four trustees to be held subject to the trusts set out therein. The present plaintiff is the sole surviving trustee of the last Will of the Settlor, and the defendants are trustees of the Settlement. Prayer 1 seeks a declaration that upon the true construction of the settlement the trusts described in the Prayer are void and unenforceable. Prayer 2 seeks a declaration that in consequence of the said trusts being void and unenforceable a resulting trust of the properties arose in favour of the Settlor and his estate.

I would say in the first place that I accept as correct the factual background to the matter as stated in the Affidavit of Deft. 1 dated 23rd November 1955. Putting the matter in general terms the trusts in question had two objects, firstly to maintain and benefit a school in the settlor's native village in the Province of Fukkien and secondly to maintain and benefit an ancestral house of worship in the same village. It seems clear the settlor's idea was to assume a role which might be described as the Chinese equivalent of the beneficent squire in an English village in times prior to 1914. The trustees of the Settlement have been anxious to give effect to the Settlor's wishes but have considered it impossible to do so at any time by reason of the general conditions existing in China.

The first question of law to be considered is whether having regard to the nature of the school and the ancestral house of worship the trusts in relation to them (or either of these trusts) are *prima facie* valid as charitable trusts, since they professedly are in perpetuity, and, indeed obviously are. Only if that question is answered in the affirmative as regards either or both trusts, does the further question arise for determination whether it has been practicable at any time since 1929 to carry the trusts into effect. The trusts, it is true are expressly stated to be charitable, but that, of course, does not necessarily mean that they are. Mr. Atkinson in this connection contended that the document contained merely two express particular trusts, and not a general charitable intention.

If this contention is correct there can be no question, as he pointed out, of applying the cy-pres principle in the present case. The leading English case on this point *In re Wilson*[1] presents indeed some resemblance in its facts to those with which we are now dealing. Moreover if one accepts a further argument put forward by Mr. Atkinson that the words in the Indenture "upon and for the charitable trusts and purpose following" mean in effect "upon the particular charitable trusts set out in this document and no others", an argument I think correct having regard to the whole document, the persuasive authority of *In re Wilson*[1] becomes in my view so strong that I have no hesitation in accepting the submission the settlor did not have a general charitable intention. I do not think it is necessary for me, particularly in view of Mr. Atkinson's lucid exposition of the matter, to dwell at length on my reasons for reaching this conclusion, but I would make the following observations. With regard to the school it is evident from the Affidavit of Deft. 1 that the words "Kong Hoh Hak How" meant to the Settlor a school with which he was already personally familiar from his return visits to China, and, moreover, a school between which and his own family there existed a well established association. He had in mind something much more definite than just some school for his native village. I do not consider there was any intention directed to the promotion of learning generally, because even if the "maintenance for poor students" may be taken as indicating such an intention I do not believe any maintenance distinct from the administration of this school was envisaged by the Settlor. With regard to the ancestral house of worship it is clear this was a shrine for family purposes, and I do not think its essential private nature is affected by the provision for the distribution of alms or food to poor travellers or to other poor persons who might come to worship at the house or live in the vicinity, for I feel this provision was contemplated by the Settlor primarily as affording financial assistance to an activity of good works in connection with the ancestral house and not as an assistance of a general nature to the alleviation of the condition of the poor of the neighbourhood or of impoverished itinerants passing through it. If this view is correct not only is there an absence of a general charitable intention in respect of this trust, but in my opinion it has not that public element which a religious trust charitable in law must possess (*Gilmour v. Coats & Ors.*[2]). I have reached the conclusions, accordingly that the trust in respect of the school, though possessing no general charitable intention, is a valid charitable trust, but that the trust in respect of the ancestral house of worship cannot be regarded as charitable, and is, therefore, null and void.

It remains to give my views on the question of practicability, a question which, as I have indicated, has a bearing only on the school trust unless I am wrong in my conclusion the trust in respect of the ancestral house was not a legal charitable trust. The Court's views on this matter can only be based on the Affidavit of Deft. 1, the veracity of which I have accepted, and on common knowledge of conditions in China at the material times. Mr. Winslow, appearing on behalf of the Attorney-General, submitted Clause (g) of the Affidavit to which I have just referred gave the impression that it would have been comparatively easy between 1929 and 1934 to administer this trust from Singapore. The appropriate comment on this submission is, I think, that, as was seen in the second world war, it is in the case of an occupied or disturbed territory much easier for a small community to carry on its own internal affairs — and indeed it must do so to some extent if chaos is to be avoided — than for any external contacts to be regularly maintained. Apart from this there is the specific statement in Clause (e) of the same Affidavit: "Ever since that time" (i.e. 1918) "the village which is in a remote and isolated locality has either been in the hands of bandits or warlords or Communists and in the result the Settlor himself was never able to visit again before his death; and it has seldom been safe or practicable for any other members of his family to return there again ever for visits". In the light of this testimony I hardly think the suggestion that it has at times any how been practicable to administer these trusts can be accepted.

For these reasons I am of the opinion both the first and second Prayers should be upheld. In respect of the first I consider the most appropriate wording of the first sentences would be "upon the true construction of the Settlement and in the circumstances which have happened etc.", and I direct accordingly.

I defer making an order as to costs until ascertaining if counsel wishes to address the Court on the subject.

Order accordingly.

Solicitors: *Allen & Gledhill; R. C. H. Lim & Co.*

ANG KIM KOW v. REG.

[C. C. A. (Whyatt C.J., Taylor and Tan Ah Tah JJ.) March 19, 1956]

[Singapore — Criminal Appeal No. 10 of 1955]

Firearms and Ammunition (Unlawful Possession) Ordinance, 1946 — Unlawful possession of ammunition — Meaning of possession — Possession by carriers.

In this case the appellant and four other persons were jointly charged with unlawful possession of ammunition to wit bombs. The evidence for the prosecution